REMARKS

The Applicant respectfully submits the above amendments and the following remarks in conjunction with the accompanying request for continued examination.

Claims 32-33 were rejected as unpatentable over U.S. Patent No. 4,968,296 to Ritch ("Ritch"). The Applicant respectfully traverses this rejection. Claims 32 recites an intraocular implant comprising "a flange connected to the tube at the outlet end of the tube" (emphasis added). Claim 32 also recites a delivery device comprising "an abutment surface for abutting the flange of the implant." Accordingly, the abutment surface of the delivery device must abut the outlet end of the implant. The Ritch reference describes implantation of a resilient "dumbbell" shaped implant 21. A special implantation instrument 16 houses the implant 21 for implantation. The Ritch patent describes and illustrates a method in which an incision 15 is made in the cornea opposite, i.e., across the anterior chamber from, the intended implantation site. (See Ritch col. 4, lines 58-51, and Fig. 3). The implantation instrument 16 is then advanced through the incision 15, across the anterior chamber of the eye, and then into the underside of the sclera at the intended implantation site. (See Ritch col. 4, lines 52-65). After the cannula 17 of the implantation instrument 16 has been inserted through the sclera, the resilient "dumbbell" shaped implant 21 is discharged from the implantation instrument 16. Because Ritch implants the device from the underside of the sclera, the outlet end of the implant comes out of the cannula first, followed by the inlet end.

In addressing claim 32, the Office Action states that Ritch discloses an "abutment surface (outside surface of tip 35) abutting the flange (since it touches flange 24 along the inside border; see Figure 4B)." (Office Action, page 2). The Applicant respectfully submits that the "outside

surface of tip 35" cannot properly be considered an "abutment surface abutting the flange of the implant" within the meaning of Applicant's specification and as claimed in Applicant's claims.

Nevertheless, to advance prosecution, the Applicant has amended claim 32 to incorporate the language of prior claim 33, requiring that the abutment surface having "an angle generally corresponding to an angle of the flange of the intraocular implant." Such a feature is described in Applicant's specification at page 16 (paragraph 33) in connection with Figures 8-10 and at pages 20-21 (paragraph 44) in connection with Figure 13. In Ritch, what the Examiner is referring to as the "outside surface of tip 35" does not have an angle generally corresponding to what the Examiner is referring to as the "flange 24," nor does Ritch suggest such an angle. Accordingly, the Applicant respectfully requests allowance of claim 32.

Claims 34-43 were rejected as unpatentable over U.S. Patent No. 3,788,327 to Donowitz ("Donowitz"), U.S. Patent No. 5,433,701 to Rubinstein ("Rubinstein") and U.S. Patent No. 6,007,511 to Prywes ("Prywes"). The Applicant respectfully traverses this rejection. The combination of various features from various references as proposed uses Applicant's claims as a guide and picks and chooses from the references in an attempt to reconstruct Applicant's invention. Such "hindsight reconstruction" of the invention is not proper in an obviousness analysis under 35 U.S.C. § 103. There is no reason other than Applicant's own disclosure for combining the references to arrive at the Applicant's invention.

Nevertheless, to advance prosecution, the Applicant has amended claims 34 and 39 to require "a delivery device comprising a rodlike instrument, wherein the rodlike instrument has an abutment surface for abutting the flange of the implant." This feature is not disclosed or suggested by the references. Moreover, even if it were proper to consider the "outside surface of tip 35" of Ritch to be an "abutment surface" within the meaning of Applicant's claims (which it

is not), there is no reason for incorporating this "outside surface of tip 35" into the proposed Donowitz/Rubinstein/Prywes combination, particularly given the divergent delivery device designs of Prywes and Ritch. In addition, the Applicant has added new claims 44 and 45 which recite that "the abutment surface of the delivery device has an angle generally corresponding to an angle of the flange of the intraocular implant." Again, this feature is not disclosed or suggested by the references. Accordingly, the Applicant respectfully requests allowance of claims 34-45.

The amendments submitted herein are without prejudice to Applicant's right to continue to pursue claims of the scope presented prior to this amendment in one or more continuation applicants. Moreover, the amendments submitted herein in no way constitute an admission that the claims of the scope presented prior to this amendment are not patentable over the prior art. To the contrary, the Applicant maintains that the claims of the scope presented prior to this amendment are patentable over the references, at least for the reasons of record. Nevertheless, the above amendments are being submitted to advance prosecution and to obtain prompt allowance of the claims.

Thus, for the foregoing reasons, the Applicant respectfully requests reconsideration of the rejections of the pending claims. Should any questions arise concerning this application, the Examiner is invited to contact the undersigned at (202) 220-4200. The Commissioner is

authorized to charge any necessary fees or credit any overpayments under 37 C.F.R. §§ 1.16 and 1.17 to Deposit Account No. 11-0600.

Respectfully submitted,

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